IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 15553 of 2006
With
SPECIAL CIVIL APPLICATION No. 15564 of 2006
To
SPECIAL CIVIL APPLICATION No. 15565 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAMPAKBHAI THAKOREBHAI PATEL & 2 - Petitioner(s)
Versus
DISTRICT COLLECTOR, SURAT & 3 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1 - 3.
RULE SERVED BY DS for Respondent(s) : 1 - 4.
MR DIPEN DESAI, AGP for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 29/11/2006

ORAL JUDGMENT

1. The petitioners have preferred the petitions for challenging the order dated 21.11.2002 – Annexure “A”, issued by the District Collector prohibiting the transfer and alienation of the land in question until the proposal is finalised by the State Government.

2. Heard Mr.Trivedi, learned Counsel for the petitioners and Mr.Desai, learned AGP for the State.

3. There is no dispute on the aspects that the Mamlatdar and ALT has passed the order declaring the petitioners as permanent tenants. There is also no dispute on the aspect that the order of the Mamlatdar is confirmed by the Dy. Collector. However, it appears that the District Collector has forwarded the proposal to the State Government for taking recourse under the law against the order passed by the Mamlatdar and its confirmation thereof by the Dy. Collector and pending the finalisation of the proposal, the impugned communication dated 21.11.2002 is issued by the Collector to the Mamlatdar prohibiting the transfer and alienation of the

land in question.

4. Mr.Desai, learned AGP is not in a position to show as to whether any action is taken by the Government in either way, for disapproving the proposal of the District Collector or for approving the proposal of the District Collector for challenging the order of the Mamlatdar and ALT and its confirmation thereof by the Dy. Collector before any higher forum.

5. Under these circumstances, I find that if the State Government or any officer nominated for such purpose does not take proper recourse to law, the clog over the property of the petitioner cannot be allowed to operate for an indefinite period and the petitioner should be at liberty to enjoy the property in accordance with law.

6. Under the above circumstances, it is hereby directed that in the event the State Government or the officer nominated for such purpose fails to take proper recourse to the law for challenging the order passed by the Mamlatdar and ALT and its confirmation thereof by the Dy.

Collector before any higher forum and if no injunction is granted by such forum known to law within a period of three months from today, the impugned communication dated 21.11.2002 of prohibiting the transfer and/or alienation of the property in question by the petitioner shall not continue to operate and the petitioner thereafter shall be at liberty to enjoy the property in accordance with law, without there being any injunction. It is clarified that in the event any prohibitory order is passed by the higher forum known to law against the order of the Mamlatdar and ALT and its confirmation thereof by the Dy. Collector, the rights of the parties shall stand governed accordingly.

7. The petitions are disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent.

29.11.2006 **(Jayant Patel, J.)**

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